

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRZYSZTOF F. WOLINSKI,

Plaintiff,

v.

GENA JONES, et al.,

Defendants.

No. 2:23-cv-00383-DAD-DB (PC)

AMENDED ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS, DENYING
MOTION TO PROCEED *IN FORMA*
PAUPERIS, AND DENYING MOTION FOR
RECONSIDERATION

(Doc. Nos. 2, 11, 17, 20, 22)

Plaintiff Krzysztof F. Wolinski is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 20, 2023, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's application to proceed *in forma pauperis* (Doc. No. 2) be denied because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 11); *see Andrews v. Cervantes*, 493 F.3d 1047, 1051–55 (9th Cir. 2007). The magistrate judge also recommended that plaintiff be ordered to pay the required \$402.00 filing fee in full in order to proceed with this action. (*Id.* at 2.) The findings and recommendations were served on plaintiff and contained notice that any objections thereto were

1 to be filed within thirty (30) days after service. (*Id.* at 3.)¹ Plaintiff filed objections on August
2 16, 2023. (Doc. No. 25.).

3 In his objections, plaintiff does not meaningfully address the magistrate judge's finding
4 that plaintiff is subject to the three strikes bar under 28 U.S.C. § 1915(g) and that he has not
5 satisfied the "imminent danger of serious physical injury" exception to § 1915(g). Rather,
6 plaintiff summarizes the legal standard for dismissals of actions and offers several legal
7 arguments going only to the merits of his claim. Accordingly, plaintiff's objections do not
8 provide any basis upon which to reject the findings and recommendations.

9 In addition, on August 21, 2023, plaintiff filed a motion for reconsideration of the court's
10 order dated August 9, 2023, contending that the court's order was premature because the
11 magistrate judge had not yet ruled on plaintiff's third motion for accommodation (Doc. No. 16).
12 (Doc. No. 20.) However, the magistrate judge has since denied that motion in an order dated
13 August 23, 2023, explaining for a third time that plaintiff has failed to present any reasons that
14 would entitle him to additional law library and ADA computer access and noting that plaintiff has
15 been successful in obtaining the assistance he needs as shown by his typed and legible filings.
16 (Doc. No. 21.) Accordingly, the court will deny plaintiff's motion for reconsideration (Doc. No.
17 20) as having been rendered moot by this order and the magistrate judge's order dated August 23,
18 2023.

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
20 conducted a *de novo* review of the case. Having carefully reviewed the entire file, including
21 plaintiff's objections, the undersigned concludes that the findings and recommendations are
22 supported by the record and proper analysis.

23
24 ¹ The court's initial order dated August 9, 2023, which was entered on the docket on August 10,
25 2023, stated that no objections had been timely filed at that time. (Doc. No. 18 at 2.) After that
26 order was signed but before it was docketed, plaintiff filed a motion for an extension of time in
27 which to file objections to the findings and recommendations. (Doc. No. 17.) Thereafter, on
28 August 16, 2023, plaintiff's objections to the findings and recommendations were filed. (Doc.
No. 19.) The court issues this amended order in order to grant plaintiff's request for an extension
of time to file his objections to the finding and recommendations, which have now been filed, and
to address plaintiff's objections.

Accordingly,

1. Plaintiff's motion for an extension of time in which to file objections to the findings and recommendations (Doc. No. 17) is granted;
2. The findings and recommendations issued on April 20, 2023 (Doc. No. 11) are adopted;
3. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 2) is denied;
4. Plaintiff's motion for reconsideration (Doc. No. 20) is denied as having been rendered moot by this order and the court's order dated August 23, 2023 (Doc. No. 21);
5. Plaintiff's request for judicial notice (Doc. No. 22) is denied as having been rendered moot by this order;
6. Within thirty (30) days from the date of service of this order, plaintiff shall pay the \$402.00 filing fee in full in order to proceed with this action;
7. Plaintiff is forewarned that failure to pay the filing fee within the specified time will result in the dismissal of this action; and
8. This matter is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: August 30, 2023


UNITED STATES DISTRICT JUDGE